

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND/ODESSA DIVISION**

KEPHART CONSULTING, LLC,

Plaintiff,

vs.

FACEFIRST, INC.,

Defendant.

Case No.: 7:24-cv-234-DC-DTG

**DECLARATION OF DANIEL MERKLE IN SUPPORT OF FACEFIRST, INC.'S
MOTION TO DISMISS**

I, Daniel Merkle, declare as follows:

1. I am Chief Executive Officer and Chairman of the Board for FaceFirst, Inc. I submit this declaration in support of FaceFirst's Motion to Dismiss Kephart Consulting, LLC's Complaint. I am over 18 years of age. Unless otherwise indicated, I have personal knowledge of the following facts and, if called and sworn as a witness, could and would competently testify thereto.

2. I understand the plaintiff in this case has asserted that a face matching software platform FaceFirst offers to facilitate improved retail security infringes certain patents. I am familiar with the accused product, including its design, development, and functionality, and the marketing and sale of the accused product.

3. I have been informed as to the geographic scope of the Western District of Texas under 28 U.S.C. § 124(d).

4. FaceFirst was founded in 2012 and is organized under the laws of the state of Delaware. Until 2021, FaceFirst maintained a physical office in Santa Monica, California. During the COVID-19 pandemic, however, FaceFirst shifted to a remote work model for all personnel and

closed the Santa Monica office.

5. Around the same time, FaceFirst determined that a physical location was desirable for receiving formal notifications and correspondence, and therefore began renting office space in Austin, Texas as its nominal headquarters. The Austin ‘office’ consists of only a single cubicle. Work at the Austin office is restricted to certain administrative tasks. The Austin office is not involved in developing, marketing, using, or selling the accused product. FaceFirst has no other office space in the Western District of Texas and does not develop, market, use, sell, or offer to sell the accused product anywhere in the Western District of Texas.

6. The accused product was developed in southern California by FaceFirst employees residing in southern California and working at FaceFirst’s Santa Monica, California office or elsewhere in southern California. Working remotely from their homes, FaceFirst employees continue to develop the accused product. None of the employees responsible for this continued development of the accused product reside in the Western District of Texas.

7. FaceFirst’s business model is to sell subscription licenses to its customers, who deploy the software at their locations. The FaceFirst employees who interface with FaceFirst’s customers and negotiate the subscription agreements work remotely from their homes, and none reside in the Western District of Texas.

8. FaceFirst tracks the locations of its customers in order to provide post-sale updates and customer support. Based on my review of FaceFirst’s list of its customers’ locations, the accused product has never been deployed, and is not used, in the Western District of Texas.

Executed on January 30, 2025, at Fox Island, washington.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DocuSigned by:

EB359D52A32E478...
Daniel Merkle

Dated: January 30, 2025

Respectfully submitted,

By: /s/ Ronald P. Oines

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on all counsel of record via the Court's ECF system.

/s/ Ronald P. Oines
Ronald P. Oines